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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/521,145	08/23/2006	Arthur H. Konwinski	SP-1307-PCT US	2780
7590 Holly M Amjad Solae PO Box 88940 St Louis, MO 63188				
EXAMINER				
ANDERSON, JERRY W				
ART UNIT		PAPER NUMBER		
1794				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/521,145

**Applicant(s)**

KONWINSKI ET AL.

**Examiner**

JERRY W. ANDERSON

**Art Unit**

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF 298)  
Paper No(s)/Mail Date \_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_

**DETAILED ACTION**

***Claim Objections***

1. Claims 4, 6, and 7 are objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim should refer to other claims in the alternative only. See MPEP § 608.01(n).

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. The term "absorbs less fat" in claim 10 and 16, is a relative term which renders the claims indefinite. The term "adsorbs less fat" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. In order to practice this invention, one of ordinary skill would have to know what the fat adsorption would be of the comparable coating composition in the claim, described as consisting essentially of bread crumbs. It is impossible to know this value, since any number of elements could be contained in the composition besides bread crumbs; further the type of bread crumbs is not specified, nor is an amount of either the bread crumbs or the claimed composition by comparison. Such ambiguity renders the claims indefinite.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. **Claims 1-6, 8-11, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Attenburrow, G.E, et al., U.S. Pat. # 5,171,605 in view of Seki, M., U.S. Pat. # 4, 440, 793.**

7. Attenburrow discloses:

- a. a high protein coating composition (lines 1-11, col. 2, '605)
- b. Heat set protein, (line 2, col. 2, '605)
- c. Protein 30-75 % of crumbs, (lines 13-15, col. 2, '605)
- d. Protein can be soy protein, (lines 40-46, col. 2, '605)
- e. Preparation by cooker extrusion, (lines 26-27, col. 3, '605)
- f. 20-50 % water, (line 44, col. 3, '605)
- g. 0-40% starch, (line 66, col. 3, '605)

- h. Extrusion temperature, 80-120°C, (line 49, col. 3, '605)
  - i. Meat, fish, poultry and vegetables coated, (lines 10-11, col. 3, '605)
  - j. Wheat starch is used, (line 22, col. 4, '605)
  - k. extrusion material reduced in size to crumbs. (lines 24-25, col. 3 ;'605)
  - l. food product, fish coated and deep fat fried, (lines 16-27, col. 5, '605)
8. Seki discloses:
- m. Extrusion temperature can be 60°-200° C, (lines 54, col. 2, '793)
  - n. concentrated soy-bean protein may be used. (lines 11-12, col. 3, '793)
9. Regarding claim1, Attenburrow discloses the claimed invention including, a high protein coating composition, (lines 1-11, col. 2, '605) protein 30-75 % of crumbs, (lines 13-15, col. 2, '605) protein can be soy protein, (lines 40-46, col. 2, '605) 20-50 % water, (line 44, col. 3, '605) preparation by cooker extrusion, (lines 26-27, col. 3, '605) but lack an extrusion temperature of 135°-145° C. Seki teaches the use extrusion techniques at 60°-200° C. (lines 54, col. 2, '793)
10. Attenburrow and Seki are analogous art in that both are concerned with the preparation of high protein food coatings for comestibles for human consumption.
11. It would have been obvious to a person of ordinary skill in the art at the time of the invention to modify the method of Attenburrow by the introduction of the wider range of extrusion temperatures of Seki, in order to more economically produce bread crumbs in a short period of time, in a small space and with less operators, (lines 12-14, col. 2, '793)

12. Regarding claims 2, 3, 5, and 6 Attenburrow and Seki disclosed the claimed invention as discussed above, including concentrated soy-bean protein may be used, (lines 11-12, col. 3, '605) wheat starch is used, (line 22, col. 4, '605) 20-50 % water, (line 44, col. 3, '605) and protein is 30-75 %. (lines 13-15, col. 2, '605)

13. Regarding claims 8 and 9, Attenburrow and Seki disclosed the claimed invention as discussed above, including a food product, fish coated and deep fat fried. (lines 16-27, col. 5, '605)

14. Regarding claim 11 and 17, Attenburrow and Seki disclosed the claimed invention as discussed above including coating a food substrate, meat, fish, poultry and vegetables coated. (lines 10-11, col. 3, '605) (lines 16-27, col. 5, '605).

**15. Claims 7, 10, 12-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Attenburrow, G.E, et al., U.S. Pat. # 5,171,605 in view of Seki, M., U.S. Pat. # 4,440,793, and further in view of Bernacchi, D.B., et al., U.S. Pat. # 6,162,481.**

16. Attenburrow and Seki are taken as above.

17. Bernacchi discloses:

- o. Baking, deep fat frying, pay frying or microwaving, (lines 34-35, col. 1, '481)
- p. Use of soy protein isolate or soy protein concentrate, (line 5, col. 2, '481)
- q. Product may be par-fried, (line 66, col. 7-line 1, col. 8, '481)
- r. Product may be baked, (lines 38-39, col. 9, '481)

- s. patties dipped in protein coating yielded 33% and 18 % reduction if fat adsorption. (lines 42-43 col. 5, '549)
18. Regarding claim 12, Attenburrow and Seki disclose the claimed invention, as discussed above, but lack techniques of frying the food product. Bernacchi teaches par-frying. (line 66, col. 7-line 1, col. 8, '481)
19. Attenburrow, Seki, and Bernacchi are analogous art in that all are concerned with the preparation of high protein coatings for comestibles for human consumption.
20. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify methods of Attenburrow and Seki with the teachings of Bernacchi concerning method of cooking of food product, such as par-frying, pan frying and deep fat frying, in order to provide a coated food product with improved texture, crispness and better maintenance of said qualities during freezer and refrigerator conditions. (lines 9-13 col. 1, '481)
21. Regarding claims 13, 14 and 15, Attenburrow, Seki, and Bernacchi disclose the claimed invention, as discussed above, including that baking, deep fat frying, par frying or microwaving can be used. (lines 34-35, col. 1, '481)
22. Regarding claims 7, 10, and 16, Attenburrow, Seki, and Bernacchi disclose the claimed invention, as discussed above, including patties dipped in protein coating yielded 33% and 18 % reduction if fat adsorption. (lines 42-43 col. 5, '549)

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JERRY W. ANDERSON whose telephone number is (571)270-3734. The examiner can normally be reached on 7 am to 5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on (571) 272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

jwa

/KEITH D. HENDRICKS/

Supervisory Patent Examiner, Art Unit 1794